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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,184	02/06/2002	Edward A. Green	FURO/05/111	8062

37563 7590 01/28/2004

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EXAMINER

HOOK, JAMES F

ART UNIT PAPER NUMBER

3752

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,184

Applicant(s)

GREEN ET AL.

Examiner

James F. Hook

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to a coiled brake tubing, classified in class 138, subclass 125.
- II. Claims 10 and 11, drawn to a method of extruding and treating a pipe, classified in class 425, subclass 381:2+.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as forming layers using a wrapping method without the need for treating the layers further, where the particulars of the method claims are not required by the article claims.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Lunn on January 20, 2004 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 10 and 11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

It is noted that claims 2, 7, and 8 are defined as method claims but are dependent on article claims, and such do not set forth method steps either, so it will be assumed that such was a typographical error and that the limitations of these claims are merely features of the article and will be treated as such. It is recommended that the preamble of these claims be changed to "coiled tubing" instead of "method" when referring to the claim they depend from as such appears to be more proper.

Claim 6, and the specification, have recited a thickness of a layer in "mills", however, such is not a well known term in the art. The examiner believes that such may be a shorthand attempt to claim millimeters, so the claim will be treated as if mills is short for millimeters. Should this be an incorrect interpretation then applicant is asked to supply a showing of what form of measurement equals a mill, and possible conversion factors.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells. The patent to Wells discloses the recited coiled air brake tubing comprising an inner core layer preferably made of nylon (col. 2, lines 55-64), a braided or other wound reinforcement layer can be provided (col. 4, lines 58-63), polyester yarn can be used for the reinforcement layer (col. 5, lines 5-7), a sheathing member 14 can be provided to surround and encase the reinforcement layer which is formed on the outer surface of the inner core, where the sheathing member can be made of polyurethane (col. 6, lines 7-28), and an outer jacket can be provided but is not shown, that can be made of the same or different material as the core tube, where nylon can also be used for the outer jacket., and the inner jacket is stated to be in the range of thickness 0.508-2.54 millimeters, which as stated above, it is believed mills in claim 6 is short for millimeters.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells in view of Stoeppelmann. The patent to Wells discloses all of the recited structure with the exception of forming the polyurethane layer of a polyether polyurethane, disclosing what form of nylon or polyamide is used, and the hardness of the polyurethane. The patent to Stoeppelmann discloses a hose for gaseous or liquid media including brake lines (col. 1, line 14 and col. 1, line 7) comprising an inner layer of polyamide or nylon, where polyamide 6, 11, or 12 can be used, in one embodiment polyurethane is used in an intermediate layer (col. 3, line 40), where the polyurethane used in the invention can be polyether or polyester polyurethane (col. 2, lines 47-49), where such are more compatible with polyester and polyamide materials (col. 2, lines 43-52), and an outer layer can also be formed of polyamide as per the embodiment mentioned above. It is considered inherent that the same type of polyurethane used, in absence of any disclosed additives to the polyurethane to alter it's hardness, in applicants hose would have equal hardness to that disclosed in Stoeppelmann. It would have been obvious to one skilled in the art to modify the polyamide used in Wells to be polyamide 6, 11, or 12 as such are known adequately strong polyamide materials used for forming layers of brake tubing, and to use polyether polyurethane as the intermediate polyurethane layer of Wells with an inherent hardness as such would provide better adhering properties to the polyurethane layer when it is touching polyesters and polyamides as suggested by Stoeppelmann.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wells. The patent to Wells discloses all of the recited structure with the exception of

disclosing how much fiber is provided in the reinforcing layer, however, such is considered an obvious choice of mechanical expedients. It would have been obvious to one skilled in the art to modify the reinforcing layer in Wells by providing any desired amount of fibers as such would only require routine experimentation to arrive at optimum values as such is merely a mechanical expedient.

Conclusion

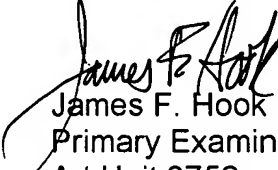
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Matthews, Johansen (112 and 457), Sullivan, Arterburn, Davis, Messerly, Okajima, Tonyali, and Green disclosing state of the art multilayer hoses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

JFH


James F. Hook
Primary Examiner
Art Unit 3752